

THE COMMISSION SHOULD CONSIDER CAREFULLY THE GROWING NEED FOR FEDERAL PREEMPTION

Many of the Commenters have echoed TIA's request that the Commission invoke the doctrine of federal preemption of state and local efforts to regulate radiofrequency exposure. PacTel, McCaw, Celpage, the New Jersey Broadcasters' Association, Hammett & Edison, and CBS et al. have provided numerous specific examples of attempted and actual intrusive state and local interference with FCC licensees' exercise of their federal privileges.²⁹

The relevant test for determining whether the Commission may lawfully preempt state regulation is as follows:

- A. whether the matter to be regulated has interstate and intrastate aspects;
- B. whether FCC preemption is necessary to protect a valid federal regulatory objective; and
- C. whether state regulation would negate the exercise by the FCC of its own lawful authority because regulation of the interstate aspects of the matter cannot be unbundled from regulation of the intra-state aspects.³⁰

Under this test, the issue of radiofrequency exposure is ripe for FCC preemption. The issue clearly has interstate aspects, as the matter of radiated signal strength clearly relates to the efficacy of interstate communications; health effects, on the other hand, are within the traditional ambit of local regulatory authority. Reliable interstate

²⁹ The issue has even arisen in the Commission's own back yard. Recent news reports indicate that the Greater Washington Educational Television Association, the licensee of radio station WETA-FM and television station WETA (NCETV) has run into opposition in an attempt to get local zoning approval for a new headquarters building on land owned by the George Washington University in the Foggy Bottom area. Local residents have attacked the proposed WETA complex on a number of grounds, including concerns about radiofrequency exposure from roof-mounted satellite earth stations and broadcast auxiliary facilities.

³⁰ Public Service Commission of Maryland v. FCC, 909 F.2d 1510, 1515 (D.C. Cir. 1990).

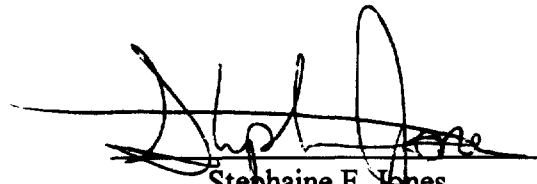
communications and the efficient use of the spectrum are clearly matters of valid federal regulation.³¹ FCC preemption is clearly necessary to protect the reliability and efficiency of interstate communications. Section 325 of the Act requires all stations to use the minimum amount of power necessary to carry out the communication desired. The FCC's limits on signal power and antenna performance, set forth in the technical provisions of the various rule Parts, carry out that Congressional mandate. State regulation which would interfere with the full enjoyment of FCC authorized parameters by definition would require operation at power less than Section 325 mandates. By necessity, such state regulation cannot be unbundled from federal regulations of the intrastate aspects of radio communication.

TIA understands that the FCC does not want to become a national zoning board, and lacks the resources to become such even if it were so inclined. However, to preserve and further the efficient use of the spectrum by FCC licensees, the FCC must act promptly to prevent onerous local and state regulation of radiofrequency exposure. Either in this rule making or in a new docketed proceeding, the Commission should invoke the doctrine of Federal Preemption to halt local and state attempts to limit the use of the radio spectrum.

³¹ See Sections 301 and 307(b) of the Communications Act.

CERTIFICATE OF SERVICE

I, Stephaine F. Jones, do hereby certify that Telecommunications Industry Association's Reply Comments in Docket 93-62 has been served this the 26nd day of April, 1994 by first class pre-paid postage to the persons on the attached list.



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